

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES  
Before the Director of Insurance and Financial Services

In the matter of:

Robert Maksymowski  
Petitioner

v

Case No. 13-931-L  
Docket No. 13-008562-DIFS

Department of Insurance and Financial Services  
Respondent

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Issued and entered  
this 21<sup>st</sup> day of February 2014  
by Randall S. Gregg  
Special Deputy Director

**FINAL DECISION**

**I. BACKGROUND**

This case concerns the application of Robert Maksymowski (Petitioner) for an insurance producer license he filed on February 5, 2013 with the Office of Financial and Insurance Regulation.<sup>1</sup> The license was denied because the Petitioner's insurance producer license had been revoked in 1998.

Petitioner challenged the license denial and requested a hearing. An order for a contested case hearing was issued. Respondent filed a Motion for Summary Decision. A hearing was held on the motion on October 15, 2013. On November 21, 2013, the administrative law judge issued a Proposal for Decision (PFD) recommending that the license denial be affirmed.

The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v Public Service Comm*, 136 Mich App 52 (1984).

**II. FINDINGS OF FACT**

The facts pertinent to this matter are not in dispute and are presented in the PFD. Those facts are adopted and incorporated into this final decision. The PFD is attached.

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<sup>1</sup> Pursuant to Executive Order 2013-1, the Office of Financial and Insurance Regulation is now known as the Department of Insurance and Financial Services. During the pendency of this case all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation were transferred to the Director of the Department of Insurance and Financial Services. See Executive Order 2013-1, effective March 18, 2013.

The facts establish that in 1998 following a formal administrative hearing, the Petitioner was found to have violated section 1207(1) of the Michigan Insurance Code (MCL 500.1207(1)) by failing to timely remit insurance premiums to the insurer to which the premiums were owed. Consequently, his insurance producer license<sup>2</sup> was revoked. The revocation was affirmed by the Ingham County Circuit Court following Mr. Maksymowski's appeal.

### III. CONCLUSIONS OF LAW

Section 1239(1) of the Michigan Insurance Code, MCL 500.1239(1), prohibits the Director from issuing an insurance producer license to an individual who has been found to have violated any insurance law:

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the [Director] shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

\* \* \*

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

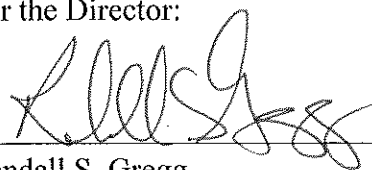
Because the Petitioner was found to have violated an insurance law of the state of Michigan, he is ineligible to receive an insurance producer license.

### IV. ORDER

The refusal to issue an insurance producer license to Robert Maksymowski is upheld.

Annette E. Flood  
Director

For the Director:

  
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Randall S. Gregg  
Special Deputy Director

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2. At the time, the license was referred to as an "agent license."

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-008562-DIFS

Robert D. Maksymowski,  
Petitioner

Case No.: 13-931-L

v

Agency: Department of Insurance  
and Financial Services

Department of Insurance  
and Financial Services,  
Respondent

Case Type: DIFS-Insurance

Filing Type: Appeal

Issued and entered  
this 21st day of November, 2013  
by:  
Renee A. Ozburn  
Administrative Law Judge

PROPOSAL FOR DECISION  
GRANTING SUMMARY DECISION

RECEIVED  
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**PROCEDURAL HISTORY**

On February 5, 2013, Robert Maksymowski (Petitioner) submitted an Application for Insurance Producers License to the Department of Insurance and Financial Services (DIFS-Respondent). On March 12, 2013, DIFS issued a Notice of Denial and Opportunity for Hearing. On August 22, 2013, a Notice of Hearing was issued scheduling a contested case hearing for October 15, 2013.

On August 21, 2013, Respondent filed a Motion for Summary Decision. On October 2, 2013, Petitioner filed a Response to Respondent's Motion for Summary Decision. On October 14, 2013, Respondent filed a Response to Petitioner's Response to the Motion for Summary Decision.

By Order dated September 26, 2013, the hearing scheduled for October 15, 2013 was converted to oral argument on the Motion for Summary Decision. On October 15, 2013, Attorney Steven Spender appeared on behalf of Petitioner Robert Maksymowski. Attorney Conrad Tatnall appeared on behalf of Respondent DIFS.

**ISSUES AND APPLICABLE LAW**

The primary issue of a motion for summary decision is whether there are material facts at issue that would provide good cause for proceeding to a full evidentiary hearing?

In addition, the following Sections of the Michigan Insurance Code of 1956, as amended; (Insurance Code), MCL 500.100 *et seq.*, are applicable in this matter:

**500.1205 Resident insurance producer license; filing; application; statement; requirements; business entity; verification of information; limited-line credit insurance.**

Sec. 1205.

(1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:

(b) Has not committed any act listed in section 1239(1).

**500.1239 Probation, suspension, or revocation of insurance producer's license; refusal to reissue; causes; civil fine; notice of license denial; hearing; license of business entity; penalties and remedies.**

Sec. 1239.

(1) In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(b) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.

**500.1207 Agent as fiduciary; accounting methods; examination of records; remuneration of person acting as agent; placing refused coverage; use of intimidation,**

threats, or unlawful inducements; agent as party to contract.

Sec. 1207.

(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility. An agent shall not accept payment of a premium for a Medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Upon receiving payment of a premium for a Medicare supplemental policy or certificate, an agent shall immediately provide a written receipt to the insured.

#### FINDINGS OF FACT

The following facts are not in dispute:

1. Petitioner Robert Maksymowski is currently licensed as a resident solicitor in Michigan pursuant to the Michigan Insurance Code of 1956, as amended, (Insurance Code), MCL 500.100 *et seq.*
2. On January 21, 1998, a Final Decision was issued by the Acting Commissioner of Insurance, revoking Petitioner's license to practice as an insurance agent in Michigan for violation of Code Section 1207(1).
3. On November 13, 1998, Ingham County Circuit Court Judge Lawrence Glazer issued an Order affirming the January 21, 1998, Final Decision revoking Petitioner's insurance agent license.
4. On February 5, 2013, Petitioner applied for a Michigan resident insurance producer license.
5. On March 12, 2013, Respondent Department of Insurance and Financial Services issued a Notice of License Denial and Opportunity for Hearing for the following reasons:
  - a. Section 1205 of the Code, MCL 500.1205, states that an application for a resident insurance producer license shall be

approved unless he or she has committed any act listed in Section 1239(1).

- b. Section 1239 of the Code, MCL 500.1239(1)(b), states that the commissioner shall refuse to issue a license if an applicant has violated any insurance laws or violated any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.
- c. Respondent answered "yes" to the application question asking "Have you ever been involved in an administrative proceeding regarding any professional or occupational license or registration?"

### CONCLUSIONS OF LAW

Respondent's Motion for Summary Decision asserts that the above Findings of Fact are the only material facts pertinent to whether Respondent can deny Petitioner's application for an insurance producer license.

Petitioner's Response to the Motion for Summary Decision asserts that the facts underlying the revocation of Petitioner's license in 1998 should be reconsidered because it is possible to interpret those facts in a manner that would not constitute a violation by Petitioner, as concluded in the commissioner's January 21, 1998 Final Decision.

This tribunal has no jurisdiction to conduct a de novo rehearing on the facts considered prior to the 1998 Final Decision. That decision was properly appealed to Circuit Court, which affirmed the Final Decision's legal conclusions. Therefore, the material facts supporting the legal conclusions of the 1998 Final Decision are no longer at issue.

Petitioner further asserts that his successful acquisition of a solicitor's license, subsequent to revocation of his insurance agent license, should be considered evidence of his qualification for licensure as an insurance producer. However, there are separate and distinct statutory provisions governing applications and qualifications for a solicitor license (MCL 500.1214) and insurance producer license (MCL 500.1205). In Code Section 1205, the legislature specifically prohibits the commissioner from issuing an insurance producer license to anyone who has committed an act listed in Section 1239(1). There is no such prohibition contained in Code Section 1214 regarding applications for a solicitor license.

Whether there is a pre-existing violation of an insurance law is the only genuine issue of material fact for purposes of Petitioner's February 2013 application. There is no dispute that a violation of 1207(1) was determined and affirmed by Circuit Court in 1998. For

purposes of Code Section 1205(1)(b), this violation constitutes committing an act listed in Section 1239(1).

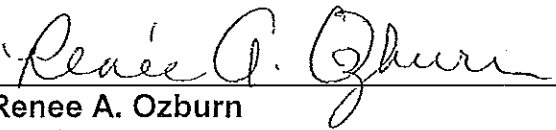
The absence of any genuine issue of material fact constitutes good cause to grant summary decision affirming the denial of an insurance producer license.

### **PROPOSED DECISION**

The undersigned Administrative Law Judge recommends that the Commissioner issue a Final Decision consistent with the above Findings of Fact and Conclusions of Law.

### **EXCEPTIONS**

The parties may file Exceptions to this Proposal for Decision within 20 days after it is issued. Exceptions should be addressed to the Office of Financial and Insurance Regulation, 611 West Ottawa Street, 3<sup>rd</sup> Floor, P.O. Box 30220, Lansing, Michigan 48909; Attention: Dawn Kobus.

  
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Renee A. Ozburn  
Administrative Law Judge